Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No. 87-275

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

GERALD M. SPARKS - - - - Petitioner

versus

CHARACTER AND FITNESS COMMITTEE OF KENTUCKY,
JUNIUS J. BEAVER, JR.,
THOMAS P. BELL,
GRANT M. HELMAN,
WILLIAM J. BAIRD, III,
STUART E. LAMPE,
PAT GILL - - - - - - Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Should this Court grant a writ of certiorari to review the granting of quasi-judicial immunity to the Kentucky Supreme Court's Committee on Character and Fitness (hereinafter "the Committee"), one member of the Kentucky Supreme Court's Board of Bar Examiners (hereinafter "the Board"), and four members and an employee* of the Committee from the claims of Gerald Sparks (hereinafter "Sparks") for monetary damages under 42 U.S.C. § 1983?

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*The Chief Justice of the Kentucky Supreme Court was originally a defendant and an appellee, but was dismissed on Sparks' motion. Also, Rosemary Puckett was originally a named defendant and a named appellee, but has been dropped as a party in this Court. All other parties below are named in the caption of this brief and are hereinafter called "Respondents".

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No. 87-275

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

GERALD M. SPARKS - - - - *Petitioner*

v.

CHARACTER AND FITNESS COMMITTEE OF KENTUCKY,
JUNIUS J. BEAVER, JR.,
THOMAS P. BELL,
GRANT M. HELMAN,
WILLIAM J. BAIRD, III
STUART E. LAMPE,
PAT GILL - - - - - - *Respondents*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CITATIONS TO OPINIONS AND JUDGMENTS DELIVERED IN COURTS BELOW

1. *Sparks* v. *Character and Fitness Committee of Kentucky,* No. 85-5629 (6th Cir. July 16, 1987) (Order denying Sparks' petition for a rehearing en banc). (Petitioner's Appendix C.)

2. *Sparks* v. *Character and Fitness Committee of Kentucky,* 818 F. 2d 541 (6th Cir. 1987) (Opinion af-

firming the district court judgment). (Petitioner's Appendix A.)

3. *Sparks* v. *Character and Fitness Committee of Kentucky,* No. 85-209 (W.D. Ky. June 25, 1985) (Order and Memorandum Opinion). (Appendix hereto, pp. 1a-3a.)

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

Sparks' petition for rehearing en banc made to the United States Court of Appeals for the Sixth Circuit (hereinafter "Sixth Circuit") was denied on June 16, 1987. Sparks had 90 days from the denial of his petition for a rehearing en banc to file his petition for writ of certiorari (hereinafter "Petition"). 28 U.S.C. § 2101(c). Sparks' Petition was docketed on July 22, 1987. This Court has jurisdiction to entertain the petition for writ of certiorari under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISION, STATUTE AND COURT RULES

Statute:

42 U.S.C. 1983

Kentucky Constitution § 116

United States Supreme Court Rules:

17.1, 17.1(a), 17.1(c)

Kentucky Supreme Court Rules:

2.000(1), 2.000(2), 2.000(3), 2.040(1), 2.040(2), 2.040(3), 2.060, 2,090, 2.095

All are quoted in the Appendix hereto.

STATEMENT OF THE CASE

Sparks filed a complaint in the United States District Court for the Western District of Kentucky (hereinafter "the district court") seeking monetary damages under 42 U.S.C. § 1983 from the Chief Justice of the Kentucky Supreme Court, the Committee, three members of the Committee (Thomas P. Bell, Grant M. Helman, and William J. Baird, III), an associate member of the Committee (Junius J. Beaver, Jr.), two employees of the Committee (Pat Gill and Rosemary Puckett), and a member of the Board (Stuart E. Lampe). Sparks claimed that the Respondents violated his constitutional procedural and substantive due process rights, equal protection rights, and Eighth Amendment rights.[1] The only remedy sought for those alleged violations was compensatory damages of $120,000, punitive damages of $500,000, attorneys's fees, and court costs.

Sparks averred that he was interviewed by Junius J. Beaver, Jr., before he first took the bar examination. After that interview, Mr. Beaver sent a letter to the Board stating that Sparks was not qualified to take the bar examination because he did not have the requisite moral character. Sparks further averred that he then took the Kentucky bar exam four times. He failed three times, and the fourth time his examination was

[1]Because the district court dismissed Sparks' action on Respondents' motion to dismiss for failure to state a claim, the averments in the complaint are referred to as "facts" for purposes of this proceeding—even though Respondents take strong issue with many of those averments.

not graded. Finally, Sparks averred that he was never given a due process hearing concerning his moral fitness to practice law.[2]

The district court dismissed Sparks' complaint, holding that Respondents were entitled to at least quasi-judicial immunity because they are integral parts of the judicial process. The Sixth Circuit affirmed.

SUMMARY OF ARGUMENT

The Petition should be denied because Sparks has cited no special reason—and none exists—for granting it. The Sixth Circuit and the trial court properly granted quasi-judicial immunity to Respondents.

The consideration of an application for admission to the bar is a judicial act. As required by Section 116 of the Kentucky Constitution, the Kentucky Supreme Court, by rule, acting by and through the Committee and Board and their respective members and staff, "governs admission to the bar", thereby governing the quality and integrity of lawyers. This regulation of the admission process is essential to the judicial system. Thus, the acts of the Respondents in reviewing Sparks' application for admission to the Kentucky bar were required by the Supreme Court rules, adopted pur-

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[2]Sparks repeats this statement to this Court at pages 5 and 11 of his Petition, but the charge is patently false. Included in the Appendix (pp. 10a-13a) are copies of the pages of a transcript of the Committee's hearing in which Sparks, with his attorney present, admitted to giving false answers on his bar application because he felt like a true answer would be held against him and he "didn't think they'd [the Committee would] find out about it!"

suant to Constitutional mandate and, therefore, were, *at least,* quasi-judicial and entitled to quasi-judicial immunity.

ARGUMENT

There are No Special Reasons for Granting Sparks' Petition to Review the Grant of Quasi-Judicial Immunity to the Respondents.

United States Supreme Court Rule[3] 17.1 provides that review on writ of certiorari "will be granted only when there are special and important reasons therefor." Sparks has given no special or important reasons to justify the granting of the petition. Sparks only complains about the grant of quasi-judicial immunity to members of the Kentucky Supreme Court's Committee and its Board. On the issue presented, there is *no* conflict among the federal courts of appeals; and the district Court and Sixth Circuit did *not* depart from the usual course of judicial proceedings. (USSCR 17.1(a)); the case involves no important federal question which has not been decided by this Court. (USSCR 17.1(c)); and, finally, the decision does not conflict with any of this Court's precedents. (USSCR 17.1(c)).

The federal courts of appeals have consistently applied the principles of quasi-judicial immunity which have been adopted by this Court. The circuits have ruled that bar examiners, committees on unauthorized practice of law, and bar associations are entitled to

[3]Hereafter, "USSCR"; Kentucky Supreme Court Rules will be cited "KSCR".

quasi-judicial immunity for their acts in regulating the practice of law. *Childs* v. *Reynoldson,* 777 F. 2d 1305 (8th Cir. 1985) (members of the board of bar examiners); *Simons* v. *Bellinger,* 643 F. 2d 774 (D.C. Cir. 1980) (in determining what constitutes the unauthorized practice of law, members of the committee on the unauthorized practice of law performed judicial acts for which they had judicial immunity); *Clark* v. *State of Washington,* 366 F. 2d 678, 681 (9th Cir. 1966) (state bar association had immunity for disbarring an attorney).

The Eighth Circuit has specifically held that the consideration of an application for admission to the bar is a judicial act. In *Childs,* the facts were essentially identical to the facts here. The plaintiff failed the bar exam twice and then brought suit against the Iowa Supreme Court and Iowa Board of Law Examiners *and its members* claiming that their wrongful conduct prevented him from passing the bar. *Id.* at 1306. An Iowa statute (not a Constitution, as here) gave the Iowa Supreme Court exclusive power to admit persons to the practice of law before Iowa's state courts. The Eighth Circuit held that consideration of admission to the bar was a judicial act and that the Court and the Board and their members were immune from liability.

Those decisions, and the decision of the Sixth Circuit in this case, are based on the fact that a character and fitness committee and a board of bar examiners and their members and staff are merely arms of the

state supreme court. In this case, the Committee and Board and its members and staff, under the supervision and control of the Kentucky Supreme Court, merely carry out duties assigned to them by the Supreme Court.

It is important to note that the holding of the federal courts of appeals cited above are entirely consistent with decisions of *this* Court. The purpose of granting judicial immunity is to leave a judicial officer "free to act upon his own convictions, without apprehension of personal consequences to himself." *Stump* v. *Sparkman,* 435 U. S. 349, 355 (1978).

More important, this Court has also applied immunity to persons who are *not* judges but *who perform acts that are integral parts of the judicial process. Briscoe* v. *Lahue,* 460 U. S. 325 (1983) (witnesses); *Imbler* v. *Pachtman,* 424 U. S. 409 (1976) (prosecutors performing prosecutorial acts). The Sixth Circuit is in accord: *Mills* v. *Killebrew,* 765 F. 2d 69 (6th Cir. 1985); *Johnson* v. *Granholm,* 662 F. 2d 449 (6th Cir. 1981), *cert. denied,* 457 U. S. 1120 (1982); and *Denman* v. *Leedy,* 479 F. 2d 1097 (6th Cir. 1973).

In this case, the Respondents' acts in considering Sparks' application for admission *are* an integral part of the judicial process. The Kentucky Supreme Court's exclusive authority to regulate admission to the bar is derived from § 116 of the Judicial Article of the Kentucky Constitution: "The Supreme Court shall, by rule, govern admission to the bar . . ." Thus, the Kentucky Constitution, approved by the people, essentially

mandates that consideration for admission to the bar *is* a judicial act.

In response to that mandate, the Kentucky Supreme Court adopted rules delegating authority to, and governing, both the Board and the Committee. Those rules clearly demonstrate that actions of the Board and Committee and their respective members and personnel are controlled by the Kentucky Supreme Court.[4] The Board and the Committee and their members are selected and appointed by the Kentucky Supreme Court (KSCR 2.000(1) and 2.040(1)). The Kentucky Supreme Court places responsibility on the Board for administering the Bar examination (KSCR 2.000(3)). The Committee is charged by the Supreme Court with the responsibility of determining the age, residence, character and fitness, education and general qualifications of applicants for admission to the bar (KSCR 2.040(3)). The actions of the Board and the Committee are closely supervised by the Kentucky Supreme Court (KSRC 2.000(2) and 2.040(2)). The Kentucky Supreme Court specifies the subjects to be tested on the bar exam, the minimum score, the testing procedure, and the fees for the bar exam (KSCR 2.090). Most important, the Kentucky Supreme Court has *ultimate* responsibility for deciding whether a candidate is ad-

[4]Sparks claims that the Kentucky Supreme Court's amendment to Rule 3.160(4), which he miscited as Rule 3.160(40), is an admission that Respondents do not have immunity. Petition at 7. Kentucky Supreme Court Rule 3.160(4) applies only to disciplinary cases involving unprofessional conduct of attorneys who have been admitted to the bar. It has no relevance whatsoever to this case.

mitted to the bar (Ky. Const. §116, KSCR 2.060 and 2.095). The Board and Committee only assist the Kentucky Supreme Court in that decision. The Court has delegated to the Committee the *authority* to *admit* to the bar, but by the Constitution and by the Court's rule-making power the *responsibility* for admission or denial is in the Supreme Court.

The actions of the Committee and the Board and their members and staff in considering the application for admission simply cannot be separated from the actions of the Kentucky Supreme Court. Their actions *are* an integral part of the judicial process, rather than a mere administrative function as argued by Sparks in his Petition at 5, 12. For this reason, the Committee and the Board and their members and staff are entitled to quasi-judicial immunity.

In an analogous context, this Court has held that a character and fitness committee and a board of bar examiners are entitled to immunity from antitrust liability because of "state action". *Hoover* v. *Ronwin,* 466 U. S. 558 (1984). In *Hoover,* the plaintiff, after failing to pass the bar exam, sued the individual members of the committee on bar examinations and admissions, alleging a conspiracy to restrain trade by limiting the number of lawyers in the state. This Court held that, because the actions of the character and fitness committee and board of bar examiners were tightly controlled by the state supreme court, their actions in the admissions process constituted state action which insulated them from antitrust liability.

In *Hoover,* this Court based its holding on several factors which are present in this case: the bar examiners are selected and appointed by the state's supreme court; the bar examiners are subject to the supervisory powers of the state's supreme court; the state's supreme court set forth the general subjects to be tested and the general qualifications of the applicants; and, finally, the supreme court had the final authority to admit or deny admission to an applicant. For all these reasons, the individuals in that case were held to be part of the state supreme court and, therefore, their actions were considered state action. For the same reasons, the challenged actions of the Respondents are state actions of the Kentucky Supreme Court, protected by judicial immunity.

Since the decision of the Sixth Circuit granting quasi-judicial immunity to the Respondents in this case is entirely consistent with the decisions of this Court and of the other federal courts of appeals, a conflict among the federal courts of appeals cannot be a basis for granting the Petition.

One of the other special reasons for granting a petition for writ of certiorari is that the Sixth Circuit or trial court departed from the usual course of judicial proceedings. (USSCR 17.1(a)). Sparks has not claimed any such departure and indeed, there is none.

Another special reason for granting a petition for writ of certiorari would be that there are important federal questions that have not yet been decided by this Court. (USSCR 17.1(c)). As discussed above, the

issues on this Petition *have* been decided by this Court and by various federal courts of appeals—all adversely to Sparks contentions.

Contrary to Sparks' general assertion, (Petition at 4), he raises no important *undecided* federal questions in his petition. He simply argues that judicial immunity does not apply to those who do not "hear cases, render written opinions, conduct trials, set bail, set bonds, or impose sentencing." Petition at 12. Unfortunately for him, however, this Court, in *Briscoe,* 460 U. S. 325 (1983), and *Imbler,* 424 U. S. 409 (1976), has already decided that judicial immunity extends beyond judges to those who are an integral part of the judicial process. The Respondents *are integral* parts of the judicial process and *are* entitled to the quasi-judicial immunity

The final special reason for granting a petition for writ of certiorari would be that the decision of the Sixth Circuit conflicts with this Court's precedents. (USSCR 17.1(c)). As discussed above, the Sixth Circuit's decision in this case is entirely consistent—not in conflict—with Court precedent in the closely analogous cases of *Hoover* v. *Ronwin,* 466 U. S. 558 (1984); *Briscoe* v. *Lahue,* 460 U. S. 325 (1983); *Stump* v. *Sparkman,* 435 U. S. 349 (1978); and *Imbler* v. *Pachtman,* 424 U. S. 409 (1976); all discussed above.

Sparks cites *Willner* v. *Committee on Character and Fitness,* 373 U. S. 96 (1953), as support for his Petition. Petition at 11. *Willner,* however, involved the simple issue of whether a bar applicant was entitled to

a due process hearing. That case did not involve the issue of whether a committee on character and fitness was entitled to quasi-judicial immunity from liability for damages. For that reason, *Willner* is totally inapplicable to the issue presented by this case.

CONCLUSION

The Petition fails to state a single special reason for the Court to hear this case. Moreover, extensive, well-established case law in this Court and other federal appellate courts shows that the Petition is without merit. Respondents, therefore, respectfully request that this Court deny Sparks' Petition.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action No. 85-209

GERALD M. SPARKS, - - - - - - - *Plaintiff,*

v.

KENTUCKY CHARACTER AND FITNESS COMMITTEE, ET AL. - - - - - *Defendant.*

MEMORANDUM OPINION—Entered June 25, 1985

This matter is before the court on the motion to dismiss of defendants Kentucky Character and Fitness Committee, Julius J. Beaver, Jr., Thomas P. Bell, Grant M. Helman, William J. Baird III, Stuart E. Lampe, and Pat Gill. They claim that the court lacks jurisdiction over the action because all of the defendants are protected by judicial immunity, that the complaint fails to state a claim upon which relief can be granted, and that plaintiff's complaint is in violation of Rule 8(a) of the Federal Rules of Civil Procedure and therefore, should be dismissed.

Plaintiff Gerald M. Sparks brings this suit *pro se* and *in forma pauperas* (sic) under 42 U.S.C. § 1983. He alleges that defendants, members and employees of the Kentucky Character and Fitness Committee and the Kentucky Board of Bar Examiners, prevented him from passing the Kentucky Bar examination in violation of his 8th, 5th, and 14th amendment constitutional rights. Specifically, Sparks contends that in 1980 Beaver placed a letter in his bar application file stating that he did not recommend Sparks to be admitted to the bar. Despite that letter, the Board per-

mitted Sparks to take the bar examination four times. He failed three if those examinations. The fourth was never graded. Thus, Sparks argues, the Committee unconstitutionally defrauded him by taking his application and examination fees knowing that it would never recommend him to the bar.

Without ruling on the other two contentions of the defendants, the court finds that the defendants are immune from suit. Thus, it shall grant their motion to dismiss. On April 17, 1985, this court entered an order dismissing plaintiff's claims against Chief Justice Robert F. Stephens. The court found that Stephens was protected by the doctrine of judicial immunity because consideration of an application for admission to the bar is judicial in nature and judges are absolutely immune from liability for damages for their judicial acts. *See Louis* v *Supreme Court of Nevada,* 490 F. Supp. 1174, 1181 (D. Nev. 1980); *Gallahad* v. *Weinshienk,* 555 F. Supp. 1201 (D. Colo. 1983). It follows from that decision that the same acts performed by an arm of the Kentucky Supreme Court retain their judicial nature as well as their immunity.

In the recent Supreme Court decision *Hoover* v. *Ronwin,* __ U. S. __, 104 S. Ct. 1989 (1984), the Court held that actions of the Arizona Supreme Court's Committee on Examinations and Admissions and Board of Bar Examiners relating to the grading of the bar examination could not be divorced from the Arizona Supreme Court's exercise of its power. Although that decision dealt with the Committee's liability under the Sherman Act, the Court's discussion of the relationship between the Committee and Board, and the state Supreme Court is equally applicable here.

The Kentucky Supreme Court has extensive authority over the Board of Bar Examiners and the Character and

Fitness Committee. Their members are appointed by the Supreme Court and the Court must approve the rules and regulations promulgated by those members. *Supreme Court Rules* 2.000 & 2.040. In addition, the court directs which subjects are to be tested and the minimum score needed to pass the examination. *Supreme Court Rule* 2.090. Finally, the court retains the final authority to determine who will be admitted to practice law in the State. *Supreme Court Rule* 2.060. Just as in the *Hoover* case, the actions of the Committee and Board which concern consideration of an application for admission to the bar cannot be divorced from the actions of the Supreme Court of Kentucky. Hence, those actions are clothed with judicial immunity.

Sparks' allegations concern improper consideration of his application for admission to the bar. For the reasons heretofore set forth those alleged acts are judicial in nature and the defendants are therefore, immune from suit. Accordingly, this court does not have jurisdiction to hear Spark's claim, and his complaint shall be dismissed.

An order of dismissal is this day entered.

DATED: June 24, 1985

(s) Edw. Johnstone
Edward H. Johnstone, Judge
United States Court

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

KENTUCKY CONSTITUTION § 116

The Supreme Court shall have the power to prescribe rules governing its appellate jurisdiction, rules for the appointment of commissioners and other court personnel, and rules of practice and procedure for the Court of Justice. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.

RELEVANT SECTIONS OF UNITED STATES SUPREME COURT RULES

Rule 17. Considerations Governing Review on Certiorari

.1 A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual

course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

* * * * * * *

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

RELEVANT SECTIONS OF THE KENTUCKY SUPREME COURT RULES

Rule 2. Admission of Persons to Practice Law

Rule 2.000 Board of Bar Examiners

(1) There is hereby created a Board of Examiners known and designated as Kentucky Board of Bar Examiners, hereinafter referred to as "Board." The Board shall be composed of three attorneys appointed by the Supreme Court of Kentucky for terms of three years, the members to serve until the expiration of their terms and until their successors are appointed. The Board shall select from its membership a chairman and a secretary.

(2) Subject to the approval of the Supreme Court, the Board shall have the power to adopt and amend rules and regulations governing the manner in which it carries out its duties.

(3) The Board is charged with the responsibility of administering the bar examination to qualified applicants for admission to the bar of the Commonwealth.

Rule 2.040 Character and Fitness Committee Nominations

(1) There is hereby created a Committee on Character and Fitness, to be composed of three attorneys, appointed

by the Supreme Court for terms of three years, the members to serve until the expiration of their terms and until their successors are appointed. The Character and Fitness Committee shall select from its membership a chairman.

(2) Subject to the approval of the Supreme Court, the committee shall have the power to adopt and amend rules and regulations governing the manner in which it carries out its duties. The Character and Fitness Committee may appoint from the bar of the state associate members of the Character and Fitness Committee.

(3) The Committee on Character and Fitness is charged with the responsibility of determining the age, character and fitness, education and general qualifications of those applicants for admission to the bar of the Commonwealth whose applications are referred to it by the Clerk of the Supreme Court. The Character and Fitness Committee further shall be authorized to render advisory opinions, based on fact situations submitted to it in writing as to whether a person who has the academic qualifications for admission to a law school approved by the American Bar Association or the American Association of Law Schools would be eligible for admission to the bar of the Commonwealth from the standpoint of character. The Character and Fitness Committee is further charged with the duty of certifying to the Supreme Court persons who appear qualified to perform legal services as interns under Rule 2.540.

Rule 2.060 Committee's Decision as to Eligibility

The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the Bar of this State shall be final unless, on motion by the applicant filed within 60 days after notice of an adverse

decision has been mailed to his last known address, the Supreme Court upon review of the record overrules such decision.

Rule 2.090 Bar Examinations

(1) The Board of Bar Examiners shall examine such applicants as are certified to it as provided in Rule 2.040. The examination shall cover a period of two days and may cover the following subjects:

(a) Administrative Law and Administrative Procedure
(b) Conflict of Laws
(c) Contracts
(d) Constitutional Law
(e) Corporations
(f) Criminal Law and Procedure
(g) Civil Procedure
(h) Domestic Relations
(i) Property (Real and Personal)
(j) Federal Taxation
(k) Torts
(l) Uniform Commercial Code
(m) Wills and Trusts
(n) Evidence.

Prior to or at the time of the examination, each applicant shall certify that he has successfully completed a course of study in law school in the subject of ethics, and that if admitted to practice he will adhere to the Code of Ethics prescribed by the Supreme Court. The changes made by this amendment shall be effective beginning with the July examination in 1979.

(2) The examination need not be given on the above grouping in the order set out, but the Board may cover the subject matter in any manner that it sees fit.

(3) An applicant who receives a general average of 75% or more shall be deemed to have passed the examination. An applicant who receives less that that percentage shall be deemed to have failed the examination. An applicant who fails to pass the examination may take additional complete examinations.

(4) The Board of Bar Examiners at the beginning of the first session shall give each applicant a numbered envelope. The applicant shall write his name upon a slip of paper, seal the name in the envelope and return the envelope to the Secretary of the Board. All papers will then be signed by the applicant only with the number upon his envelope. When the applicant has completed answering the questions on any given subject, he shall deposit his written answers thereto with the Secretary of the Board.

(5) Each applicant must complete his answers to the portion of the examination given to him before leaving the examination room for any purpose except by permission of the Board.

(6) The papers containing the questions and written answers given by applicants will be preserved by the Secretary of the Board for a period of one year from the time that the application for admission has been passed upon by the Supreme Court, and longer if so ordered by the Court.

(7) Upon recommendation of the Board of Bar Examiners, the Supreme Court may appoint qualified members of the bar, to be known as Bar Examination Graders, to assist the examiners in the grading of examination papers. Persons so appointed shall hold those positions for terms of one year and until the appointment of their successors.

(8) Effective for the February 1982 Bar Examination and thereafter each applicant must pay a fee of one hundred dollars ($100.00) for each examination. The Board

of Bar Examiners may waive the examination fee upon a satisfactory showing by the applicant that the payment thereof would cause him undue financial hardship.

Rule 2.095 Approval of License to Practice Law

(1) When an applicant has passed an examination as provided by Rule 2.090, the Board of Bar Examiners shall certify that fact to the Supreme Court together with a recommendation that the applicant be admitted to practice law. The Court, if in regular session, or any Justice thereof during vacation, shall, in the absence of disqualifying facts or circumstances brought to the attention of the Court or Justice, approve the recommendation and authorize the Clerk of the Court to issue a certificate of admission.

(2) When the Character and Fitness Committee determines that an applicant is eligilble for admission to the bar of this state without examination, the Committee's recommendation as provided for in Rule 2.040(6) shall be certified to the Supreme Court, and the approval for the issuance of a certificate shall be considered as set forth in paragraph (1) of this Rule.

SUPREME COURT OF KENTUCKY

HEARING BY THE CHARACTER AND FITNESS COMMITTEE
Kentucky State Bar Association

IN RE: Application for Permission to take the Kentucky Bar Examination
By: Gerald (Jerry) Marshall Sparks

DATE: April 16, 1983

TIME: 10:15 a.m.

PLACE TAKEN: Fowler, Measle & Bell
Suite 4A
Citizens Bank Square
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APPEARANCES:

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312 South Fourth Street
Louisville, Kentucky 40202

HON. ISAAC CONLEY, JR.
Suite 518, Marion E. Taylor Building
312 South 4th Avenue
Louisville, Kentucky 40202
Attorney for Applicant

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Mr. Bell: Let the record state that Mr. Isaac Conley is present and representing the applicant, Jerry Sparks.

The Witness, JERRY SPARKS, after first being duly sworn, was examined and testified as follows:

Mr. Bell: I'd like to enter as Exhibit No. 1 on behalf of the Character & Fitness Committee letter under date of February 17, 1983, addressed to Mr. Jerry Sparks and signed by—this is a copy of a letter sent to him over the signature of Thomas Bell, Chairman, Character & Fitness Committee informing him of the hearing to be held on March 26, 1983. That hearing was rescheduled due to Mr. Baird's illness. And have that marked as Exhibit 1, please, for the record.

(Reporter marks Letter dated February 1, 1983, as Character & Fitness Exhibit No. 1 for the purpose of identification and the same is attached hereto and filed herewith)

Mr. Bell: I would like to have marked Exhibit No. 2 for Character & Fitness Committee, letter under date of March 25, 1983, addressed

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to Mr. Sparks over signature of Thomas Bell, setting today's date of April 16, 1983, at 10:00 a.m. for Mr. Sparks' hearing. And attached to that letter is a receipt where the letter was sent by certified mail, return receipt signed by Jerry Sparks. Enter it as a Character & Fitness exhibit and make it part of the record, please.

(Reporter marks Letter dated March 25, 1983, as Character & Fitness Exhibit No. 2 for the purpose of identification and the same is attached hereto and filed herewith)

Mr. Bell: Before I submit this as Exhibit 3, which is the Application to Take Bar Exam, I'd like to have Mr. Sparks and his attorney look at it. Is this the original application that you filed? It looks like some parts of it have been Xeroxed or copied on some type of machine.

Mr. Conley: Is that the one you sent?

(Witness examines same)

The Witness: Parts of this looks like a copy, part of it.

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By Mr. Conley

Q. 43. Mr. Bell indicates that in your application dated January 14th, which is one that I just referred to, that you admitted that you took the exam in July—on July 24th and July 25th, 1979. Did you, in fact, take the Pennsylvania Bar Examination on those dates?

A. I took the Pennsylvania Bar Exam in July, but in '75, 1975. I believe that's—and, also, in February of '75.

Q. 44. Okay. Was that—reflect (sic) in the amendment and the original application that you submitted—

A. Yes, sir.

Q. 45. —in January of this year?

A. I think so, yes, sir.

Q. 46. So you never took the exam in July—

A. No.

Q. 47. —1979 in Pennsylvania?

A. No, sir, I didn't.

Q. 48. Do you have an idea as to how Mr. Bell came to believe that you took it in July of 1979?

A. No, I don't.

Q. 49. You're absolutely certain, you never took the bar in Pennsylvania in July of 1979?

A. No, I did not; I took it in '75, though.

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By Mr. Bell

Q. 19. Okay. So, you did put it in this application?

A. Yes, sir.

Q. 20. But you didn't in the first one?

A. Yes.

Q. 21. And you're telling us that you didn't think the first application—you didn't take that seriously; is that what you're telling us?

A. I'm not saying I didn't take it seriously. I—probably in my mind at that time I felt like it would be held against me; and I came back home trying to make a new start.

Q. 22. And if you didn't put it in here, you didn't think that they'd find out about it? Is that why you didn't put in in there?

A. You mean on my original application?

Mr. Bell: Yes, sir.

A. Yes, sir, I guess so.

Q. 23. Okay. Now, you've listed some other cases here in your application on 1/21/81, harassing or simple assault. Were you arrested for that?

A. No, sir, that was a summons.

Q. 24. It was a summons?

A. Uh-huh.

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Q. 42. That's just three, four years ago. Did you take it or didn't you?

A. Hmmmm, I'm going to say I did take it.

Q. 43. Now you're changing your testimony, that you did take it?

A. Yes, sir, because I believe—

Q. 44. Because that letter does refresh your memory and you're not so specific now as you were?

A. Well—all right, I did not have any—when I told you I didn't take it in 1979, I did not tell you that to deceive you. I had—honestly believed that I did not take that Bar in '79. I remember exactly taking it in 1975, okay; I remember taking it in Pennsylvania, because that was right before I went through the divorce; that's the reason I remember it. But, this letter does refresh my memory and, based upon this letter, I say I had it in 1979.

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Mr. Helman: Of course, our decision is subject to appeal.

Mr. Conley: Thank you for your consideration.

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THEREUPON, the Hearing in the aforementioned matter was concluded.

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